

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WILLIAM WISE MURRAY,

Petitioner,

v.

**Civil Action No. 2:05 CV 96
(Maxwell)**

JOYCE FRANCIS, Warden,

Respondent.

ORDER

It will be recalled that on December 30, 2005, *pro se* Petitioner William Wise Murray instituted the above-styled civil action by filing a Petition for Writ of Habeas Corpus by a Person in Federal Custody pursuant to 28 U.S.C. § 2241.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

After conducting an initial screening and review, United States Magistrate Judge James E. Seibert issued an Order Directing Respondent To Show Cause Why Writ Should Not Be Granted on January 23, 2006, wherein he directed the Respondent to show cause why a writ should not be granted within thirty days from the entry of said Order.

The docket in the above-styled habeas corpus action reflects that a Motion For Extension Of Time To Respond To Court Order To Show Cause was filed by the

Respondent on March 10, 2006, and that the Respondent's Response To Show Cause Order was filed on April 3, 2006.

The Petitioner's "Traverse" - [In The Form Of Declaration Of Facts] - To Respondent's Answer To The District Court's January 23, 2006 Order Directing Respondent To Show Cause Why Writ Should Not Be Granted was filed on April 13, 2006.

On December 8, 2006, United States Magistrate Judge James E. Seibert issued a Report And Recommendation wherein he recommended that the Petitioner's Petition for Writ of Habeas Corpus be denied and dismissed with prejudice; that the Petitioner's Motion For Summary Judgment Pursuant To Rule (56) Of The Fed. R. Civ. Proc. be denied; that the Petitioner's Second Motion For Summary Judgment Pursuant To Rule (56) Of The Fed. R. Civ. Proc. be denied; and that the Petitioner's Motion For Judgment On The Pleading(s) Pursuant To Rule 12(c) Of The Fed. R. Civ. Proc. be denied. The foregoing recommendations were based on Magistrate Judge Seibert's determination that, because the United States Court Of Appeals For The Fourth Circuit held in United States v. Morris, 429 F.3d 65 (2005), that the Booker decision is not retroactively applicable to cases on collateral review, the Petitioner is unable to make the necessary showing that § 2255 is inadequate or ineffective to test the legality of his sentence such that he is entitled to relief under § 2241.

In his Opinion/Report And Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date of said Report And Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of his right to appeal from a judgment of this Court based upon said Report And Recommendation.

On December 15, 2006, and December 18, 2006, two separate documents entitled Petitioner's Second [Notice Of Objection] To Magistrate's Report And Recommendation To Dismiss The 12/30/05 28 USC 2241(c)(3) Cause Of Action Before The Court were filed (See Docket Nos. 40 and 41).

Upon an independent *de novo* consideration of all matters now before the Court, it appears to the Court that the issues raised by the Petitioner in his Petition For Writ Of Habeas Corpus were thoroughly considered by Magistrate Judge Seibert in his Report And Recommendation. Furthermore, upon consideration of the two separate documents entitled Petitioner's Second [Notice Of Objection] To Magistrate's Report And Recommendation To Dismiss The 12/30/05 28 USC 2241(c)(3) Cause Of Action Before The Court, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Seibert in his Report And Recommendation. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Seibert's Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action.

Accordingly, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert December 8, 2006, be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Petitioner's Petition for Writ of Habeas Corpus by a Person in Federal Custody pursuant to 28 U.S.C. § 2241 (Docket No. 1) be, and the same is hereby, **DENIED** and **DISMISSED**, with prejudice, and **STRICKEN** from the Court's docket. It is

further

ORDERED that the Petitioner's Motion For Summary Judgment Pursuant To Rule (56) Of The Fed. R. Civ. Proc. (Docket No. 12) be, and the same is hereby, **DENIED**. It is further

ORDERED that the Petitioner's Second Motion For Summary Judgment Pursuant To Rule (56) Of The Fed. R. Civ. Proc. (Docket No. 17) be, and the same is hereby, **DENIED**. It is further

ORDERED that Petitioner's Motion For Judgment On The Pleading(s) Pursuant To Rule 12(c) Of The Fed. R. Civ. Proc. (Docket No. 24) be, and the same is hereby, **DENIED**.

In light of the denial and dismissal of the Petitioner's Petition for Writ of Habeas Corpus, it is further

ORDERED that the Petitioner's Motion Requesting Copies Of Complete Original Trial Transcripts Filed In The U.S. Court Of Appeals For The Fourth Circuit In Direct Appeal Number 94-5500 And/Or Preparation Of The Transcripts - All At Government Expense (Docket No. 54) be, and the same is hereby, **DENIED as moot**.

The docket in the above-styled civil action reflects that, by unpublished *per curiam* opinion entered by the United States Court of Appeals For The Fourth Circuit on June 6, 2007, an appeal of Magistrate Judge Seibert's December 8, 2006, Report And Recommendation by the Petitioner was dismissed for lack of jurisdiction. In light of the dismissal of the Petitioner's appeal to the United States Court of Appeals For The Fourth Circuit, it is

ORDERED that the Petitioner's Motion Requesting That District Court Hold Pre-Filed {Notice Of Appeal From District Court's Final Order Denying And/Or Dismissing Petitioner's 12/30/05 28 USC 2241(c)(3) Petition For Writ Of Habeas Corpus, Motion For Leave To

Proceed On Appeal In *Forma Pauperis*, And Affidavit In Support Of Motion To Proceed On Appeal In *Forma Pauperis*] In Abeyance (Docket No. 58) be, and the same is hereby, **DENIED as moot.**

It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel of record in the above-styled civil action.

ENTER: September 25th, 2007



United States District Judge